MAY 24

October Term, 1968

No. 1331

PENDOLA VALLEY CENTER, INC., a California corporation, et al.,

Petitioners,

vs.

BOARD OF LOS ANGELES, et al.,

Respondents.

On Petition for a Writ of Certiorari to the California Court of Appeal, Second Appellate District, Division

BRIEF IN OPPOSITION

SUBJECT INDEX

	Page
Opinion Below	1
Jurisdiction	2
Questions Presented	2
Argument	3
1. The Challenged Presumption Is Not "Conclusive"	3
2. Findings of Fact Are Not Required When an Appellate Court Can Adequately Review a Case by Examining Its Record	3
3. The Board Properly Excluded the Alleged Sales Ratio Study Prepared by the Assessor	3
4. The Board Properly Excluded the Sales Ratio Study of the Taxpayers' Witness	4
5. The Board Properly Excluded Assessment Ratio Evidence Pertaining to Prior Years	5
6. The Board Properly Refused to Compel the Assessor to Disclose the Tentative Unpublished Assessment Ratio Studies of the State Board of Equalization	7
7. The Board Did Not Follow an Erroneous Concept of Law as to the Methods of Showing Assessment Discrimination	7
8. The Rules of Evidence Do, in Fact, Apply to the Hearings of County Boards of Equalization in California	7
Conclusion	8

TABLE OF AUTHORITIES CITED

Cases — Page

A. F. Gilmore v. County of Los Angeles, 186 Cal. App. 2d 471, 9 Cal. Rptr. 67 8

Bandini Estate Co. v. Payne, 10 Cal. App. 2d 623, 52 P. 2d 959 6

Birch v. County of Orange, 88 Cal. App. 82, 262 Pac. 788 6

De Luz Homes, Inc. v. County of San Diego, 45 Cal. 2d 546, 290 P. 2d 544 6

Eastern-Columbia, Inc. v. County of Los Angeles, 70 Cal. App. 2d 497, 161 P. 2d 407 5

El Toro Development Co. v. County of Orange, 45 Cal. 2d 586, 290 P. 2d 569 6

Ewa Plantation Co., In re, 384 P. 2d 287 6

Fairfield Gardens v. County of Solano, 45 Cal. 2d 575, 290 P. 2d 562 6

Kaiser Co. v. Reid, 30 Cal. 2d 610, 184 P. 2d 879 6

Kittery Elec. Light Co. v. Assessor, 219 A. 2d 728 .. 4

Leach Corp. v. County of Los Angeles, 228 Cal. App. 2d 634, 39 Cal. Rptr. 654 .....5, 7, 8

Lockheed Aircraft Corp. v. County of Los Angeles, 207 Cal. App. 2d 119, 24 Cal. Rptr. 316 6

McClelland v. Board of Supervisors, 30 Cal. 2d 124, 180 P. 2d 678, cert. den. 332 U.S. 823 7

Michael Todd Co. v. County of Los Angeles, 57 Cal. 2d 684, 371 P. 2d 340 6

Peck's Products Co. v. Bannister, 362 S.W. 2d 596 6

Page

Rancho Santa Margarita v. San Diego County, 135 Cal. App. 134, 26 P. 2d 716 8

Universal Consolidated Oil Co. v. Byram, 25 Cal. 353, 153 P. 2d 746 8

Victor Valley v. County of San Bernardino, 45 Cal. 2d 580, 290 P. 2d 505 6

Web Service Co. v. County of Los Angeles, 242 Cal. App. 2d 1, 51 Cal. Rptr. 753 7

Wild Goose Country Club v. County of Butte, 60 Cal. App. 339, 212 Pac. 711 6

Rules

California Rules of Court, Rule 976 1

California Rules of Court, Rule 976(b) 1

Statutes

California Constitution, Art. XIII, Sec. 9 7

California Evidence Code, Secs. 600-668 3

California Political Code, Sec. 3676 8

California Revenue and Taxation Code, Sec. 1609 .. 8

California Statutes of 1939, Ch. 154 8

California Statutes of 1965, Ch. 299 3

United States Code, Title 28, Sec. 1257(3) 2

IN THE

Supreme Court of the United States

October Term, 1968
No. 1321

POMONA VALLEY CENTER, INC., a California corporation, *et al.*,

Petitioners,

vs.

COUNTY OF LOS ANGELES, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the California Court of Appeal, Second Appellate District, Division Two.

BRIEF IN OPPOSITION.

Opinion Below.

Pursuant to its determination under Rule 976 of the California Rules of Court, the opinion of the California Court of Appeal, Second Appellate District, Division Two (hearing denied by the California Supreme Court) was not published.[1] However, it is printed in Appendix A of the Petition.

[1]Rule 976(b) provides that an opinion of a court of appeal shall be published only "if it involves a new and important issue of law, a change in an established principle of law or a matter of general public interest."

Jurisdiction.

The Petition invokes jurisdiction under 28 U.S.C. §1257(3) alleging that the petitioners did not enjoy due process of law at the property tax equalization hearing below conducted by the Los Angeles County Board of Equalization.

Questions Presented.

Petitioners contend that they were denied due process "by the appellate court in making the presumption of validity of the act of a public official conclusive."

Petitioners also allege that they were denied due process at the hearing before the Los Angeles County Board of Equalization because

a. the board did not make formal findings of fact,

b. the board excluded an alleged sales ratio study prepared by the assessor, when offered in evidence by the petitioners in a single combined motion to introduce it together with other inadmissible items of evidence; no offer of proof was made,

c. the board excluded a sales ratio study prepared for petitioners by a former county employee,

d. the board excluded evidence of the countywide assessment ratio for years *prior* to the year involved herein,

e. the board excluded evidence of tentative, unpublished assessment ratio studies made by the State Board of Equalization for the current year on the ground that they were privileged by statute until finalized and published,

f. the board applied an erroneous concept of law, and

g. the board applied the rules of evidence.

ARGUMENT.

1. The Challenged Presumption Is Not "Conclusive".

The only presumption regarding the validity of the act of a public official involved in this case is the presumption that public duty was properly performed and that the assessment therefore is correct. The California courts held that this presumption applied in this case because the taxpayers had not sustained their burden of showing the board that the assessor's figures were unfair or discriminating (Pet. App. A, pp. 7-10). This obviously is not a "conclusive" presumption at all. It regulates the burden of proof. In 1961 it also constituted substantial evidence which could be weighed against other evidence, a rule which was abolished when California adopted Division 5 Chapter 3 §§600-668 of its Evidence Code in 1967 (Calif. Stats. 1965 ch. 299).

2. Findings of Fact Are Not Required When an Appellate Court Can Adequately Review a Case by Examining Its Record.

This point is fully explained in the opinion of the court below (Pet. App. A, pp. 10-11).

3. The Board Properly Excluded the Alleged Sales Ratio Study Prepared by the Assessor.

Counsel for the taxpayers offered an alleged sales ratio study (it was actually merely a list of sales) together with two other items of clearly inadmissible evidence. Counsel for the county suggested that these be taken one at a time [Ex. 1 July 27 p. 57][2], but the

[2]Superior Court Ex. 1 is the transcript of the hearing before the board of equalization.

taxpayers ignored this suggestion. All three items were excluded. No offer of proof was made. The matter is fully argued in the opinion below (Pet. App. A, pp. 5-6).

4. The Board Properly Excluded the Sales Ratio Study of the Taxpayers' Witness.

The taxpayers asked the witness Watson to state the assessment ratio "for *real* property within the County of Los Angeles on the first Monday in March 1961" [Ex. 1 July 19 p. 87]. The witness did not investigate the fair market value of any of the 381 properties in his sample; he had not verified the sales data nor had he investigated the terms of the sales. The data was untrustworthy because not verified, because obtained from people who were unnamed, and because the names of the buyers and sellers were unknown (thus making it impossible to check). One-third of the sales in his sample occurred *after* the tax lien date. The witness was not qualified as a real estate appraiser or as a statistician. His former employment in the assessor's office had been in the personal property section, *not* the real estate section. His 381-item sample represented only 22/1000ths of 1% of the 1,732,101 parcels on the assessment roll—a sample which is inadequate in size. Furthermore, the properties in the sample were selected from an area not large enough to be representative of the county as a whole.[3]

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[3]Regarding the requirement that the sample be fairly representative of the taxing district, see *Kittery Elec. Light Co. v. Assessor,* (1966 Maine) 219 A. 2d 728 at 734.

5. The Board Properly Excluded Assessment Ratio Evidence Pertaining to Prior Years.

The taxpayers complain that the board excluded evidence of the assessment ratio for prior years. At page 18 the Petition even argues that in other cases this office has contended that assessment ratio determinations of the State Board of Equalization were not only admissible but even controlling. This is a gross distortion, because in the cases cited the ratios being considered were not those pertaining to prior years, nor were they the tentative, unpublished determinations for the current year which the California courts have held to be privileged by statute until finalized and published.

The reasons why the California courts have consistently held that the assessment ratios for prior years are not relevant evidence of this year's ratio are readily explained. California permits property to be assessed at a fraction of its value and the fraction differs not only from county to county but from year to year within the same county.

> "Assessment for tax purposes is a continuous process which normally reflects many changes each year. It is not a static thing."

Leach Corp v. County of Los Angeles, (1964) 228 Cal. App. 2d 634 at 642, 39 Cal. Rptr. 654 (hearing denied by Calif. Sup. Ct).

The following cases illustrate the use of different assessment ratios:

40%—*Eastern-Columbia, Inc. v. County of Los Angeles,* (1945) 70 Cal. App. 2d 497, 161 P. 2d 407;

35%—*De Luz Homes, Inc. v. County of San Diego,* (1955) 45 Cal. 2d 546 at 558-559, 290 P. 2d 544;

25%—*Fairfield Gardens v. County of Solano,* (1955) 45 Cal. 2d 575, 577, 290 P. 2d 562;

25%—*Victor Valley v. County of San Bernardino,* (1955) 45 Cal. 2d 580 at 583, 290 P. 2d 505;

70%—*El Toro Development Co. v. County of Orange,* (1955) 45 Cal. 2d 586 at 588, 290 P. 2d 569;

35%—*Michael Todd Co. v. County of Los Angeles,* (1962) 57 Cal. 2d 684 at 697, fn., 371 P. 2d 340;

60%—*Wild Goose Country Club v. County of Butte,* (1922) 60 Cal. App. 339 at 343, 212 Pac. 711;

45%—*Lockheed Aircraft Corp. v. County of Los Angeles,* (1962) 207 Cal. App. 2d 119 at 123 fn., 24 Cal. Rptr. 316;

50%—*Bandini Estate Co. v. Payne,* (1935) 10 Cal. App. 2d 623 at 627, 52 P. 2d 959;

50%—*Kaiser Co. v. Reid;* (1947) 30 Cal. 2d 610, 615, 184 P. 2d 879.

Birch v. County of Orange, (1927) 88 Cal. App. 82 at 87, 262 Pac. 788, is particularly interesting because the court recites the use in that county of a 40% ratio in 1918 and a ⅓rd ratio in 1916.

This is also the general rule in other jurisdictions. See *In re Ewa Plantation Co.* (Hawaii 1963) 384 P. 2d 287 at 290 and *Peck's Products Co. v. Bannister,* (Sup. Ct. Mo. 1962) 362 S.W. 2d 596 at 601.

6. The Board Properly Refused to Compel the Assessor to Disclose the Tentative Unpublished Assessment Ratio Studies of the State Board of Equalization.

The California courts have interpreted the California statutes as creating a privilege which can be waived only by the State Board of Equalization (not the local county assessor) for these studies until they have been finalized and published.[4] We submit that this is a proper interpretation of the California statutes (since amended) which scarcely creates a federal question.

7. The Board Did Not Follow an Erroneous Concept of Law as to the Methods of Showing Assessment Discrimination.

So found the superior court and the court of appeal (Pet. App. A, p. 10). We do not find the point argued in the Petition.

8. The Rules of Evidence Do, in Fact, Apply to the Hearings of County Boards of Equalization in California.

At page 19 the Petition states that California cases relating to equalization hearings "have consistently held that technical evidentiary rules do not apply". This is sheer nonsense! County boards of equalization are created by the California Constitution, Article XIII §9. They perform a judicial function.[5] They may act only

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[4] *Leach Corp. v. County of Los Angeles,* (1964) 228 Cal. App. 2d 634 at 643-646, 39 Cal. Rptr. 654 (hearing denied by Calif. Sup. Ct.); *Web Service Co. v. County of Los Angeles,* (1966) 242 Cal. App. 2d 1 at 8-11, 51 Cal. Rptr. 753.

[5] *McClelland v. Board of Supervisors,* (1947) 30 Cal. 2d 124 at 129, 180 P. 2d 678, cert. den. 332 U.S. 823.

on the basis of legal evidence.[6] The Petition cites *A. F. Gilmore v. County of Los Angeles,* (1960) 186 Cal. App. 2d 471, 9 Cal. Rptr. 67 which upheld the decision of a county board of equalization because it was supported by substantial evidence. A dictum in that case says that the board is "not bound by the technical rules of evidence" citing *Rancho Santa Margarita v. San Diego County,* (1933) 135 Cal. App. 134, 26 P. 2d 716. The *Santa Margarita* case was, however, decided on the basis of a statute which has since been repealed, to wit, Calif. Political Code §3676 which had provided that "the board may . . . hear and take such evidence . . . as in its discretion it may deem proper." This discretionary power was revoked when §3676 was repealed in 1939 and its place was taken by Calif. Revenue and Taxation Code §1609 which in its entirety provided that "On the hearing of the application the county board may subpena witnesses and take evidence in relation to the inquiry" (Calif. Stats. 1939 ch. 154).

Conclusion.

This case was decided correctly by the court below. No important question of federal law is involved. We respectfully submit that the Petition herein should be denied.

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JOHN D. MAHARG,
County Counsel.

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[6] *Universal Consolidated Oil Co. v. Byram,* (1944) 25 Cal. 353 at 360, 153 P. 2d 746; *Leach Corp. v. County of Los Angeles,* (1964) 228 Cal. App. 2d 634 at 637 and 641-646, 39 Cal. Rptr. 654 (hearing denied by Calif. Sup. Ct.).